

MELICK & PORTER, LLP COVID-19 MEMO:

Melick & Porter, LLP provides you with the below update regarding the impact of COVID-19 on issues relating to insurance in the United States. The below is not meant to be all-inclusive, but provides an overview as to the trends in the United States. If you have any questions regarding any of the updates below, please do not hesitate to contact us.

SUMMARY OF IMPORTANT LEGISLATION AND EMERGENCY ORDERS AND DIRECTIVES:

Below we provide an overview as to the types of legislative actions that have been occurring, both on a federal and state level.

- Based on the Senate failing to advance a coronavirus stimulus bill and the ensuing election-season, it appears a deal will not be made before the November elections. The inaction comes amid pleas from Federal Reserve officials and others who have expressed more fiscal assistance is needed to prevent the economy from sliding further this year.
- On September 9, 2020, the U.S. Food and Drug Administration updated its [online FAQs](#), entitled “Adverse Event Reporting for Medical Devices Under Emergency Use Authorization (EUA) or Discussed in COVID-19-Related Guidance Documents,” explaining how a manufacturer distributing medical devices under an EUA or following a COVID-19-related enforcement policy guidance document can satisfy its associated adverse event reporting obligations.
- The US Internal Revenue Service issued [news release IR-2020-194](#), approving the temporary use of digital signatures for certain IRS forms that must be filed with the IRS manually. Of note, this list of forms includes Form 8832, Entity Classification Election, which allows an eligible entity to elect how it will be classified for US federal tax purposes.
- On Tuesday, September 8, 2020, nine pharmaceutical companies [issued](#) a joint pledge stating that they would not seek Food and Drug Administration (FDA) approval for their vaccines until a rigorous phase 3 clinical trial shows that it is safe and effective. The move aims to reassure the public about the safety and efficacy of their potential COVID-19 vaccines as concerns rise that President Trump will push regulators to rush the vaccine approval process in time for November’s election.
- Massachusetts Launches “My Local MA” Campaign to Drive Economic Activity and Safely Support Small and Local Businesses

INSURANCE AND COVERAGE RELATED NEWS AND ORDERS/LEGISLATION:

Below we provide an update as to regulations, news, and litigation specifically related to insurance and potential coverage.

- The NAIC and nearly all U.S. state insurance departments have issued guidance to health insurance carriers in the areas of telehealth, consumer outreach, special enrollment periods, prescription refills and cost-shares (co-pays, deductibles and co-insurance).

Specifically, in this guidance, many of these states are:

- o requiring insurers to waive cost-sharing for COVID-19 testing when ordered in accordance with Centers for Disease Control and Prevention (CDC) guidelines and prohibiting insurers from requiring prior authorization for such testing;
- o requiring insurers to permit early refills, except for drugs in certain drug classes such as opioids, when consistent with doctor/pharmacist approvals;
- o directing insurers to keep their policyholders informed with accurate information about coverage for COVID-19-related testing and treatment;
- o directing insurers to expand the availability of telemedicine for their policyholders and eliminating barriers to its use; and
- o directing insurers to continue to ensure network adequacy given the anticipated increase in demand due to COVID-19.

BUSINESS AND COMMERCE NEWS AND LEGISLATION RELATED TO COVID-19:

Below we discuss news regarding the economic impact of COVID-19 and measures being taken to address that.

- The Maine Department of Revenue Services issued an [alert](#) discussing the state's non-conformity to the CARES Act due to the state's adoption of the Internal Revenue Code as amended through December 31, 2019.
- The Massachusetts Department of Revenue issued a revised [technical information release](#) and emergency and proposed regulations addressing the Massachusetts source-of-income for nonresidents telecommuting during the COVID-19 pandemic.
- In Advisory 2020-24, the Rhode Island Division of Taxation announced that for the duration of Rhode Island's coronavirus state of emergency, the Division will not seek to establish nexus for Rhode Island corporate income tax and sales and use tax purposes solely because an employee is temporarily working from home during the state of emergency. In addition, the performance of any services by such employees within Rhode Island will not, of itself, cause their employer to lose the protection of Pub. L. No. 86-272.
- According to the Federal Emergency Management Agency, most unemployed workers will get up to \$1,800.00 in extra jobless [benefits](#) through the Lost Wages Assistance program the Trump Administration created last month.

- On September 10, 2020, the IRS announced it has expanded the list of forms and returns for which the use of digital signatures will be allowed temporarily. The IRS release—[IR-2020-206](#)—adds six more forms and returns that cannot be filed electronically but are allowed to be signed digitally in an effort to reduce in-person contact and lessen the risk to taxpayers and tax professionals during the coronavirus (COVID-19) pandemic. The newly added six returns are:
 - Form 706, U.S. Estate (and Generation-Skipping Transfer) Tax Return;
 - Form 706-NA, U.S. Estate (and Generation-Skipping Transfer) Tax Return;
 - Form 709, U.S. Gift (and Generation-Skipping Transfer) Tax Return;
 - Form 1120-ND, Return for Nuclear Decommissioning Funds and Certain Related Persons;
 - Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts; and
 - Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner.
- The loss of academic learning due to schools closing amidst the coronavirus pandemic could cost the U.S. economy between \$14 trillion and \$28 trillion if they remain closed for in-person learning much longer, according to a [new report](#) from economists.

LITIGATION/CIVIL JUSTICE SYSTEM UPDATES AND ORDERS:

Below we, highlight additional judicial orders related to the COVID-19 pandemic.

- The New Hampshire Supreme, Superior, and Circuit Courts are processing cases during this time and the courthouses are open for limited in-person hearings. To protect the staff and the public, access to courthouses and clerks' offices continues to be limited through September 28, 2020, per [Amended Emergency Orders](#).
- The Maine Judicial Branch has released the [State of Maine Judicial Branch COVID-19 Phased Management Plan](#). The plan creates a five-phased process for reopening Maine Courts and is based on the most recent scientific data available from the Maine Center for Disease Control (CDC) and Prevention and stakeholder input. The plan was updated on July 2 to increase the maximum capacity of courtrooms and common areas to 50 people so long as social distancing can be practiced, beginning in Phase 3. The August 28 update extends the starting date for Phase 5 from October 19 to November 9. Phase 5 includes the resumption of jury trials. [Read the Plan](#).